

RECEIVED

AUG 27 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Telephone Number Portability

)
)
)
)
)

CC Docket No. 95-116

COMMENTS OF PILGRIM TELEPHONE, INC.

Walter Steimel, Jr., Esq.
John Cimko, Esq.
Edwin G. Kichline, Esq.
HUNTON & WILLIAMS
1900 K Street, N.W.
Washington, D.C. 20006
Telephone: (202) 955-1500

Dated: August 27, 1999

No. of Copies rec'd 014
List ABCDE

Executive Summary

Pilgrim Telephone is an interstate, interexchange carrier in the business of providing casual access, common carrier services. Pilgrim has a significant competitive stake in the rules and requirements applicable to the provisioning of 900 number resources and, therefore, will be directly affected by decisions made by the Commission in this proceeding.

Pilgrim requests that the Commission reject the recommendation made by the North American Numbering Council, in its recent report to the Commission, to suspend any further consideration of issues relating to the implementation of 500 and 900 number portability, and that the Commission issue a Further Notice of Proposed Rulemaking in this docket to explore various legal, economic, and policy issues associated with 500 and 900 number portability.

Initiation of a rulemaking proceeding will serve the following objectives. First, the rulemaking proceeding would enable the Commission to build a record and make an informed determination of the nature and extent of consumer and competitive benefits that could be realized through imposition of portability requirements. Second, the rulemaking would give parties an opportunity to assess and comment upon the technical issues addressed by the Council in its report to the Commission, especially the conclusions reached by the Council regarding the length of time necessary to set up a national database to implement portability.

Third, the rulemaking would provide a forum for analyzing and resolving whether the Commission has sufficient general statutory authority to establish portability requirements applicable to all carriers that provide 500 and 900 services. Finally, the rulemaking would give focus to issues regarding whether 500 and 900 number portability would contribute to

achieving broader statutory goals encompassed in the Communications Act of 1934 and policy objectives established by the Commission.

Pilgrim believes that the consumer and competitive benefits of number portability outweigh any costs that may be associated with such a requirement, and that the Commission has general statutory authority to require portability based upon a determination that the public interest will be served by its action. Recognizing that these issues will benefit from further debate and analysis, Pilgrim suggests the public interest would not be served by accepting the Council's recommendation to close off any further discussion or evaluation of the merits of portability.

TABLE OF CONTENTS

I.	INTRODUCTION	2
II.	BACKGROUND	3
III.	NUMBER PORTABILITY FOR 500 AND 900 NUMBER RESOURCES	6
	A. Consumer Benefits	8
	B. Competitive Benefits	10
	C. Recommended Commission Action	12
	1. Costs and Benefits	14
	2. Technical Issues	16
	3. Other Legal and Policy Issues	18
IV.	CONCLUSION	20

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
)	

COMMENTS OF PILGRIM TELEPHONE, INC.

Pilgrim Telephone, Inc. ("Pilgrim"), by counsel, and pursuant to a Public Notice released by the Common Carrier Bureau on August 3, 1999,¹ hereby submits its comments in the above-captioned proceeding with respect to recommendations made by the North American Numbering Council (NANC).²

¹ Telephone Number Portability, CC Docket No. 95-116, Public Notice, "Common Carrier Bureau Seeks Comment on North American Numbering Council Recommendation Concerning Feasibility of Number Portability of 500 and 900 Numbers," DA 99-1527, released Aug. 3, 1999.

² See Letter from A. Hasselwander, Chairman, North American Numbering Council, to L. Strickling, Chief, Common Carrier Bureau, Federal Communications Comm'n, June 11, 1999, Attachment, North American Numbering Council, "NANC Response to FCC Rule, CC Docket 95-116; FCC 98-275, FR Vol. 63, No. 237, at Pages 68201-2, Concerning Implementation of 500/900 Service Portability" (NANC Response).

I. INTRODUCTION

Pilgrim is an interstate, interexchange carrier in the business of providing casual access, common carrier services.³ The services provided most extensively by Pilgrim are collect and calling card casual access common carrier services, and various information and enhanced services, including pay-per-call services.⁴ Among the information and enhanced services Pilgrim provides are group access bridging, telemessaging and voice mail services, bulletin board services, and access to these various services.

Pilgrim provides common carrier services pursuant to tariffs on file with the Commission and with various State commissions. Pilgrim has participated extensively in rulemaking proceedings before the Commission involving a wide variety of competitive services and service provisioning issues. Pilgrim, like other providers of pay-per-call services, has a significant competitive stake in the rules and requirements applicable to the provisioning of 900 number resources and, therefore, will be directly affected by decisions made by the Commission in this proceeding.

Pilgrim, by these comments, asks that the Commission reject the recommendation made by the NANC to suspend any further consideration of issues relating to the

³ Pilgrim currently provides presubscribed 1+ services only in the eastern Local Access and Transport Area in the Commonwealth of Massachusetts.

⁴ Pay-per-call services are those services that are subject to regulation under Section 228 of the Communications Act of 1934, 47 U.S.C. § 228, and Sections 64.1501 through 64.1512 of the Commission's Rules, 47 C.F.R. §§ 64.1501-64.1512. The Commission has described 900 service as "a calling service providing businesses with a method to deliver information, advice, or consultations quickly and conveniently by telephone." Telephone Number Portability, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8449 (para. 188) (*First Report and Order*).

implementation of 900 number portability,⁵ and that the Commission issue a Further Notice of Proposed Rulemaking in this docket to explore the legal, economic, and policy issues associated with 500 and 900 number portability, some of which were identified by the Commission in the *Second Reconsideration Order*.⁶

II. BACKGROUND

The Commission has consistently recognized the potential consumer and competitive benefits of number portability, both in the context of 800 service and more recently in the context of all telephone numbers provided by local exchange carriers (LECs). In the latter case, the Commission has acted to implement a congressional mandate, observing that “Congress has recognized that number portability will lower barriers to entry and promote competition in the local exchange marketplace.”⁷ The number portability requirements enacted by Congress reflect one aspect of the vision of the Telecommunications Act of 1996,⁸ “that removing legal and regulatory barriers to entry and reducing economic impediments to entry will enable competitors to enter markets freely, encourage technological development, and ensure that a firm’s prowess in satisfying consumer demand will determine

⁵ Although Pilgrim directs its comments principally to the issue of 900 number portability, we note that certain of our recommendations regarding areas for further examination by the Commission, *e.g.*, possible consumer and competitive advantages of establishing a new national database, could benefit 500 number resources in ways similar to the benefits for 900 number resources.

⁶ Telephone Number Portability, CC Docket No. 95-116, Second Memorandum Opinion and Order on Reconsideration, 13 FCC Rcd 21204 (1998) (*Second Reconsideration Order*).

⁷ *First Report and Order*, 11 FCC Rcd at 8354 (para. 2).

⁸ Pub. L. No. 104-104, 110 Stat. 56 (1996).

its success or failure in the marketplace.”⁹ The Commission concluded in the *First Report and Order* that “[n]umber portability promotes competition between telecommunications service providers by, among other things, allowing customers to respond to price and service changes without changing their telephone numbers. The resulting competition will benefit all users of telecommunications services.”¹⁰

The Commission also acknowledged that the Communications Act of 1934 (Act) requires all LECs to implement 500 and 900 number portability, but concluded that there was not sufficient record evidence to determine whether it is technically feasible for LECs to comply with the statutory requirement. As a consequence, the Commission instructed the Industry Numbering Committee (INC), acting on behalf of the NANC, to study issues relating to technical feasibility and report its findings to the Commission.¹¹ The INC submitted its report to the Commission on July 9, 1997,¹² specifically limiting its analysis to

⁹ *First Report and Order*, 11 FCC Rcd at 8354 (para. 2).

¹⁰ *Id.* at 8368 (para. 30). *See also* Telephone Number Portability, CC Docket No. 95-116, Third Report and Order, 13 FCC Rcd 11701, 11704 (para. 4) (1998) (*Third Report and Order*).

¹¹ *First Report and Order*, 11 FCC Rcd at 8454 (para. 198).

¹² *See* Letter from J. Gallagher, INC Moderator & P. Jordan, INC Assistant Moderator, Industry Numbering Comm., to W. Caton, Acting Secretary, Federal Communications Comm’n, July 9, 1997, Attachment, Industry Numbering Committee, “Report in Response to the Federal Communications Commission’s First Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Telephone Numbering Portability, CC Docket No. 95-116/RM 8535 (FCC 96-286), Adopted June 27, 1996, Released July 2, 1996” (INC Report).

the technical feasibility of LEC-to-LEC portability,¹³ and finding that “the technology to provide such [LEC 500 and 900 number] portability is understood and could be developed with the associated effort and expense.”¹⁴

The Commission returned to the 500 and 900 number portability issue in the *Second Reconsideration Order*, in which it expanded its specifications for the NANC study to include types of portability not examined in the INC report, required an additional report to be filed by the NANC based upon the expanded study, and concluded that it would hold in abeyance any further consideration of its legal authority to impose portability requirements upon carriers other than LECs. The Commission also delayed any examination of cost issues or other factors that should be taken into account in determining whether portability requirements would serve the public interest, until it had received the additional NANC report.

The NANC report, which was submitted to the Commission on June 11, 1999, concluded that, while it is not currently technically feasible for all 500 and 900 number providers to implement portability using existing networks and database capabilities, technology is available to permit such deployment in the future. The NANC estimated that it would take four years to accomplish such deployment. The NANC then directed its attention

¹³ *Id.* at 3. The Commission had instructed the INC to address “the technical feasibility of requiring LECs to make their assigned 500 and 900 numbers portable” *First Report and Order*, 11 FCC Rcd at 8454 (para. 198).

¹⁴ INC Report at 4. The INC recommended against implementation of LEC-only portability in part because it “would be confusing to end users, could favor one industry segment over another, [and] would not promote the most efficient utilization of . . . resources” *Id.*

to the advisability of pursuing 500 and 900 number portability issues any further, and, based upon its conclusion that there appears to be little demand for portability and that implementation costs would be substantial, recommended that the Commission should not proceed with any efforts to implement 500 or 900 number portability.

III. NUMBER PORTABILITY FOR 500 AND 900 NUMBER RESOURCES

The Commission made clear in the *Second Reconsideration Order* that it should proceed through a series of steps in order ultimately to determine whether 500 and 900 number portability requirements should be applicable to interexchange carriers (IXCs) as well as to LECs.¹⁵ First, the Commission must evaluate “the technical feasibility of LEC-to-non-LEC, non-LEC-to-LEC, [and] non-LEC-to-non-LEC portability for 500 [and] 900 numbers.”¹⁶ Second, the Commission must determine whether it has statutory authority “to require number portability for 500 and 900 numbers assigned to all carriers,”¹⁷ including IXCs. Third, the Commission must assess the potential consumer and competitive benefits that may result from imposing 500 and 900 number portability requirements.

Fourth, the Commission must determine whether economic feasibility is a relevant factor for establishing such requirements and, if so, it must evaluate issues relating to economic feasibility. Finally, in light of these factors, the Commission must make a public interest determination with regard to the advisability of promulgating the requirements.

¹⁵ *Second Reconsideration Order*, 13 FCC Rcd at 21224-25 (paras. 41, 43).

¹⁶ *Id.* at 21224 (para. 41) (footnote omitted).

¹⁷ *Id.*

The NANC Response, it might be said, got the Commission to first base by reaching the conclusion that technology is available to make it possible to deploy 500 and 900 number portability in the future.¹⁸ But the NANC Response then proceeds to recommend that the Commission should immediately circle the bases toward a conclusion that 500 and 900 number portability implementation should not be pursued, *without* any further exploration by the Commission of any of the additional issues identified in the *Second Reconsideration Order* and outlined above.

Pilgrim suggests that the Commission should reach home plate at a more deliberate pace, with an eye toward striving to realize the consumer and competitive benefits that may be provided by 500 and 900 number portability. The Commission should not embrace the unsupported and unexplained conclusions sketched in the NANC Response regarding cost and demand issues, and should therefore reject the NANC recommendation that implementation of 500 and 900 number portability should not be pursued at this time. We outline in the following sections some preliminary observations regarding the consumer protection and competitive benefits that may be derived from the application of 500 and 900 number portability requirements to all carriers, and we then discuss the reasons for initiating a further rulemaking to complete the Commission's consideration of 500 and 900 portability issues.

¹⁸ NANC Response at 2-3.

A. Consumer Benefits

Congress has identified the need “to protect [telephone subscribers] against abusive practices by providers of pay-per-call services”¹⁹ and to “offer telephone subscribers (where technically feasible) the option of blocking access from their telephone number to all, or to certain specific, prefixes or area codes used by pay-per-call services”²⁰

Implementation of number portability for 900 numbers could provide the added benefit of furnishing an effective means for furthering these congressional objectives.²¹

To take one example, the establishment of a national database could prove to be an effective means of carrying out subscriber blocking instructions. The NANC has indicated that an appropriate network architecture for 500 and 900 number portability would involve creation of a national database “that would contain a master instruction list to which service providers would upload customer specific information.”²²

As Pilgrim has observed in other Commission proceedings, incumbent local exchange carriers (ILECs) have steadfastly refused to provide non-discriminatory access to blocking

¹⁹ 47 U.S.C. § 228(b)(3).

²⁰ 47 U.S.C. § 228(c)(5)(A).

²¹ As noted in the previous section, these comments intend to present only a preliminary assessment of potential consumer protection and competitive benefits that could be derived from implementation of 500 and 900 number portability. These are issues that Pilgrim believes should be explored in detail by the Commission in a rulemaking proceeding in connection with its making a public interest determination regarding the establishment of implementation requirements.

²² NANC Response at 1.

information pertaining to 900 number services.²³ The fact that this blocking information is resident in LEC-controlled databases, and is not generally available to other service providers on a non-discriminatory basis, can impair the efficient and consistent implementation of subscribers' call blocking preferences. Although Pilgrim has proposed a direct solution to this problem in the *Local Competition Rulemaking*,²⁴ we point out here that establishment of a national database maintained by a neutral third party, as proposed by the NANC, could prove to be an attractive means of realizing optimum compliance with blocking preferences. A centrally maintained database, to which access is made available to all service providers, could result in heightened efficiency and reliability in blocking 900 calls for customers who have requested such blocking.

Moreover, additional consumer benefits might flow from the construction of a national database to implement 500 and 900 number portability. A national database that contains up-to-date customer-specific information relating to customer account status and real-time billed name and address would enable service to be provided in a manner that increases customer satisfaction by reducing billing errors and lowering billing and collection costs.²⁵

²³ See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98 (*Local Competition Rulemaking*), Second Further Notice of Proposed Rulemaking, Comments of Pilgrim Telephone, Inc., May 26, 1999, at 18.

²⁴ *Id.* at 20 (arguing that the Commission should add real-time billed name and address, billing and collection services, and blocking data to the list of unbundled network elements).

²⁵ Pilgrim recognizes that the Commission, in the *First Report and Order*, determined "that, at this time, the information contained in the number portability regional databases should be limited to the information necessary to route telephone calls to the appropriate service providers." *First Report and Order*, 11 FCC Rcd at 8403 (para. 99). The Commission also concluded that "[t]o include . . . proprietary customer-specific information would complicate the functions of the number portability databases and impose requirements

The database could also provide a convenient and effective platform for billing and collection for consumer purchases not directly related to information services or enhanced services. The Federal Trade Commission (FTC) has recently observed, for example, that “there has been a sharp rise in the development of a market for non-audiotext telephone-billed purchases that are in many cases not directly related to telecommunications services or sold by common carriers.”²⁶ The FTC noted that:²⁷

consumers can now purchase voice mail, Internet access, club memberships, and a host of other services from vendors who charge the consumer’s telephone bill For these non-audiotext transactions, the telephone is merely the instrument of purchase, and the product or service may have little or nothing to do with the telephone. Rather, the telephone becomes much like a credit card data capture terminal, but without the security . . . and other consumer protections afforded to consumers who make purchases with credit cards.

A centralized database, in addition to enabling 500 and 900 number portability, might also facilitate, and provide a degree of security for, these types of consumer transactions.

B. Competitive Benefits

Consumers are also likely to reap further benefits from implementation of 500 and 900 number portability, because these portability requirements, and the network architectures necessary to meet the requirements, would promote competition in the offering of a variety

that may have varied impacts on different localities.” *Id.* (footnote omitted). Pilgrim believes that these concerns and conclusions may not be pertinent in the context of 500 and 900 portability databases. Further, including in a national portability database types of customer-specific information which are not considered proprietary (such as blocking requests) could assist the efficient performance of call routing and billing functions. In any event, we believe the issue is one that should be examined in a further rulemaking proceeding.

²⁶ Federal Trade Commission, Pay-Per-Call Rule, Notice of Proposed Rulemaking, FTC File No. R611016, 63 Fed. Reg. 58524, 58527 (Oct. 30, 1998).

²⁷ *Id.* (footnote omitted).

of information services and enhanced services.²⁸ Moreover, Pilgrim agrees with the Commission's finding in the *Second Reconsideration Order* that "[i]mposing portability obligations on all 500 and 900 service providers would make it possible for all customers of 500 and 900 services to switch providers without changing their numbers. This, in turn, would promote competition in the 500 and 900 service markets."²⁹

The NANC offers no support or documentation for its conclusion that there is not sufficient demand for 500 and 900 number portability.³⁰ Pilgrim believes it is more logical to anticipate that portability would spur market entry by information service and enhanced service providers which, in turn, would produce downward pressures on rates and bring a greater array of services into the marketplace. We also suggest that the history of 800 access service offers convincing evidence of the competitive benefits that can result from number portability.

The Commission found in the 800 access service rulemaking that there are "significant benefits that number portability can bring to consumers, through heightened 800 service competition and increased choices."³¹ The Commission acted in the 800 access

²⁸ See, e.g., *First Report and Order*, 11 FCC Rcd at 8451 (para. 191) ("[I]nformation service providers [who submitted comments to the Commission] generally agree that 900 portability should be mandated by the Commission as soon as possible to increase competition for information service provider traffic among IXCs, and to offer a more efficient and broader range of information services.") (footnote omitted).

²⁹ *Second Reconsideration Order*, 13 FCC Rcd at 21223 (para. 36).

³⁰ See NANC Response at 2.

³¹ Provision of Access for 800 Service, CC Docket No. 86-10, Memorandum Opinion and Order on Reconsideration and Second Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 5421, 5425 (para. 20) (1991). See also Provision of Access for 800 Service, CC Docket No. 86-10, Report and Order, 4 FCC Rcd 2824, 2829 (para. 38) (1989).

service proceeding to require number portability because it concluded that this “would promote competition in the 800 market by allowing current 800 subscribers to switch IXCs without abandoning their 800 number and new 800 subscribers to select an IXC to carry their traffic without being limited to the 800 numbers assigned [to] that carrier.”³²

The Commission’s expectations regarding competition in the 800 market have been borne out by events. Number portability has proven to be a powerful engine in driving the development of competition.³³ Consumers, of course, have directly benefitted from this competitive growth. In Pilgrim’s view, the Commission should not forgo the pursuit of these competitive benefits with regard to the 500 and 900 markets based upon the sparse NANC conclusions regarding the insufficiency of demand.

C. Recommended Commission Action

The Commission indicated in the *Second Reconsideration Order* that it would “take appropriate action” upon receipt of the NANC report.³⁴ Now that the report has been submitted, the Commission should issue a Further Notice of Proposed Rulemaking in this docket to explore and resolve legal and policy issues associated with implementing portability for 500 and 900 number resources. The NANC recommendation to walk away from the issue

³² Provision of Access for 800 Service, CC Docket No. 86-10, Report and Order, 4 FCC Rcd 2824 (para. 2) (1989).

³³ A recent press report concluded that number portability in 800 services, as mandated by the Commission, has spurred the growth of toll-free numbers. See “Long-Distance Carriers Struggle in the Race To Implement IN Services,” *Intelligent Network News*, Mar. 3, 1999. Between May 1993 and August 1997, the number of toll-free numbers increased from 2.4 million to 11.4 million. Revenues for 800 and 888 services reached \$22.7 billion in 1998 and are projected to climb to \$34.4 billion by 2001. *Id.*

³⁴ *Second Reconsideration Order*, 13 FCC Rcd at 21225 (para. 42).

should be rejected as a premature prejudgment of issues that the Commission expressly noted in the *Second Reconsideration Order* should be examined only after evidence had been presented regarding the technical feasibility of implementing 500 and 900 number portability.

As we outline in the following sections, Pilgrim believes that the rulemaking should:

- Seek further information regarding the potential consumer and competitive benefits to be derived from number portability.
- Address issues relating to the costs associated with constructing a network architecture to support number portability, as well as questions relating to demand for 500 and 900 number portability.
- Review technical issues stemming from the NANC findings, especially questions relating to the implementation timetable projected by the NANC, and consider referring additional technical issues to the NANC.
- Examine other legal and policy issues, including the scope of the Commission's authority to require number portability, and the extent to which number portability requirements would help effectuate various statutory objectives embodied in the Act.

Only by conducting such a rulemaking will the Commission be in a position to render the public interest judgments necessary to decide whether portability requirements should be imposed. Rather than following the path recommended by the NANC — a path that leads to deciding the issues without examining them — Pilgrim urges the Commission to place itself in the position of being able to make an informed judgment regarding the public interest based upon a fully developed rulemaking record.

1. Costs and Benefits

Pilgrim believes there are persuasive reasons to expect portability requirements for 500 and 900 number resources to hold promising potential for consumers and competition. We reiterate here that a central focus of the rulemaking proceeding should be a further examination of the scope and nature of these potential benefits, with particular attention to assessing the likelihood that market entry and a proliferation of information services and enhanced services would follow in the wake of number portability.

If the Commission concludes, based on the rulemaking record, that markets can be made more competitive through the imposition of portability requirements, and that consumers can be given a greater range of service choices available at reasonable prices, then the Commission should heighten its resolve to overcome any technical or other obstacles that might prevent realization of these benefits. The NANC has expressed the view that there “would be a significant investment in new network facilities and service support structures” and that the present lack of demand would make the incurrence of such expenses unjustified.³⁵ There is no basis for accepting the NANC view at this juncture of the proceeding, especially in light of the manner in which the Commission addressed the issue of economic feasibility in the *Second Reconsideration Order*. SBC Communications Inc. had argued in the reconsideration proceeding that the Commission must consider the economic feasibility of 500 and 900 number portability.³⁶ In turning aside this suggestion, the Commission noted that, “[a]s a practical matter, we believe that it is premature to determine

³⁵ NANC Response at 2.

³⁶ See *Second Reconsideration Order*, 13 FCC Rcd at 21223 (para. 38 & n.100).

what factors may be appropriate to consider with respect to the possible implementation of portability . . . if we determine that we have jurisdiction to order portability of those numbers for all carriers.”³⁷

Assuming *arguendo* that the Commission concludes that costs are an appropriate factor to consider in connection with making public interest findings regarding the imposition of portability requirements, the Further Notice of Proposed Rulemaking should serve as a vehicle for soliciting data regarding the scope and extent of these costs. In this connection, the burden should be upon those parties opposing number portability requirements to come forward with documentation sufficient to demonstrate the level of investments that would be incurred. Moreover, even if it were to be conceded that substantial investments may be required to implement portability, the more pertinent issues are whether these costs would be outweighed by consumer and competitive benefits that may result from 500 and 900 number portability,³⁸ whether it is likely that carriers incurring these costs would be able to recoup them, and whether recoupment can be effected in a competitively neutral manner.

The rulemaking proceeding will provide an opportunity to assess and answer these questions. In addition, the rulemaking will enable parties to comment on the NANC’s untested assumptions about the extent of demand for 500 and 900 number portability. Pilgrim believes that market entry and the expansion of information service and enhanced service

³⁷ *Id.* at 21225 (para. 43).

³⁸ The Commission has recognized the importance of this cost-benefit analysis. *See Third Report and Order*, 13 FCC Rcd at 11704 (para. 4) (“Although telecommunications carriers, both incumbents and new entrants, must incur costs to implement number portability, the long-term benefits that will follow as number portability gives consumers more competitive options outweighs these costs.”).

offerings will drive the recoupment of carrier investments. The fact that other parties may differ with that assessment is precisely why a rulemaking is necessary to reach an informed conclusion. Rather than relying on a couple of sentences in the NANC report, the Commission should build a record and then reach an informed decision.

In addition, the rulemaking could explore the feasibility of alternative measures to ease concerns regarding cost recovery. For example, it might be possible to establish some form of presubscription mechanism whereby 500 and 900 number service providers would presubscribe to national 500 and 900 number database services. The presubscriptions, which would later be used to offset charges for actual usage incurred by the presubscribing providers, could serve as a source of up-front funding for construction of the national database.

2. Technical Issues

The NANC has concluded that it would take four years to bring on line a national database for 500 and 900 number portability; 12 months would be needed for “requirements definition” and 36 months would be needed for “vendor selection, development, and implementation.”³⁹ The NANC report does not discuss the derivation of these estimates, and Pilgrim does not intend at this time to comment on their reasonableness. On the other hand, we believe that this issue of timing would be important for the Commission to address in the rulemaking proceeding.

The question of the length of time necessary to design and activate a national database for 500 and 900 number portability is an important aspect of assessing whether the public

³⁹ NANC Response at 3.

interest warrants imposition of portability requirements. There is the risk of concluding, for example, that the public interest might not merit going forward if the Commission were to accept the four-year NANC time line. The basis for such a conclusion might be that, given the dynamic nature of the telecommunications industry, the projected consumer and competitive benefits of portability might become too speculative and attenuated if they could not begin to be realized for four years.

In these circumstances, the rulemaking would serve the important function of subjecting the NANC timing estimates to scrutiny and comment, and would also give the Commission an opportunity to consider whether it should take any prescriptive action in an effort to accelerate the implementation timetable.⁴⁰

The Further Notice of Proposed Rulemaking would also serve as a vehicle by which the Commission could direct the NANC, acting through the INC, to continue the work of examining technical issues. This work could serve to better inform the Commission's subsequent consideration of issues involving network architecture, business issues associated with the construction of separate databases,⁴¹ and the implementation timetable.

⁴⁰ The Commission, as a general matter, has voiced concerns regarding delays in implementing number portability. In rejecting the suggestion of some parties that the Commission direct an industry organization to develop an implementation plan for telephone number portability, the Commission found that such a step would cause delay, and that "such a delay is inconsistent with the 1996 Act's requirement that LECs make number portability available when doing so is technically feasible, as well as with the pro-competitive goals of the 1996 Act, and would not serve the public interest." *First Report and Order*, 11 FCC Rcd at 8392 (para. 75).

⁴¹ See NANC Response at 1-2.

3. Other Legal and Policy Issues

Another critical issue to be resolved in the rulemaking, as the Commission noted in the *Second Reconsideration Order*, is whether the Commission has statutory authority to impose portability requirements on IXC⁴². Although the Commission chose not to rule on this issue, other than to confirm its earlier finding that Section 251 does not serve as a source of such authority,⁴³ the Commission did present its preliminary assessment of analyses that may support a conclusion that the Commission does possess sufficient general statutory authority to require IXCs to provide number portability.

Pilgrim agrees with the Commission's observations in the *Second Reconsideration Order* that the absence of portability requirements applicable to IXCs would result in significant impediments to competing 500 and 900 number providers.⁴⁴ That practical consideration increases the urgency of the need for the Commission to examine and resolve the question of its legal authority. While Pilgrim endorses the preliminary analysis undertaken by the Commission, we take this occasion to stress that the Commission should now take the steps necessary to reach closure on this issue.

In addition to providing a forum for addressing the question of the Commission's legal authority, the rulemaking proceeding would also facilitate the examination of the extent to which portability requirements would promote statutory objectives. For example, the rulemaking could examine whether such requirements would advance the purpose of Section

⁴² *Second Reconsideration Order*, 13 FCC Rcd at 21221-23 (paras. 34-37).

⁴³ *Id.* at 21221 (para. 34).

⁴⁴ *Id.* at 21222-23 (para. 36).

256 of the Act “to ensure the ability of users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks.”⁴⁵ Although Section 256 is concerned with interconnectivity issues which may not be directly implicated in the context of number portability, the Commission may wish to examine whether the establishment of a national database to implement portability could also enhance “the ability of . . . public telecommunications networks used to provide telecommunications service to communicate and exchange information . . . , and to interact in concert with one another.”⁴⁶

Another example might involve an exploration in the rulemaking proceeding of the extent to which portability requirements would serve the purposes of Section 257 of the Act. Section 257 instructs the Commission, *inter alia*, to identify and eliminate market entry barriers that might impede entrepreneurs and other small businesses from providing telecommunications services and information services, and also requires that the Commission seek to promote statutory policies favoring diversity of media voices, competition, technological advancement, and promotion of the public interest.⁴⁷ As we have suggested in earlier sections, Pilgrim believes that the absence of portability requirements impedes market entry, harming both consumers and businesses that might otherwise serve as the vanguard of

⁴⁵ 47 U.S.C. § 256(a)(2).

⁴⁶ 47 U.S.C. § 256(d).

⁴⁷ 47 U.S.C. §§ 257(a), 257(b).

“vigorous economic competition”⁴⁸ for a variety of information services and enhanced services.

IV. CONCLUSION

The NANC report, in confirming the technical feasibility of portability for 500 and 900 number resources by all carriers, has significantly aided the Commission in taking an important first step toward resolving the issues presented in the *Second Reconsideration Order*. But rather than packing up and going home at this point, as the NANC suggests, the Commission should now initiate a rulemaking to address whether portability requirements will serve the public interest.

Such a step would be entirely consistent with the findings of the Commission in the *Second Reconsideration Order*. The Commission made evident there that, after obtaining evidence regarding the technical feasibility of implementing 500 and 900 number portability, it “will address” issues relating to its legal authority⁴⁹ and it will turn to the question of the factors that may be appropriate to consider regarding possible implementation of portability requirements.

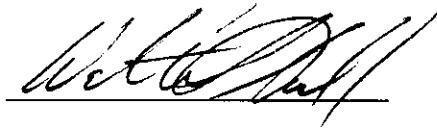
Pilgrim urges the Commission to move forward by adopting a Further Notice of Proposed Rulemaking. We are confident that a basis for general statutory authority to impose portability requirements can be articulated, and that an examination of the consumer and competitive benefits to be gained from such requirements will compel a conclusion that the requirements are in the public interest. Although we recognize that these are issues for

⁴⁸ 47 U.S.C. § 257(b).

⁴⁹ *Second Reconsideration Order*, 13 FCC Rcd at 21223 (para. 37).

another day, we stress here that the Commission should reject the recommendation of the NANC that the sun should set on that day before it even begins. The initiation of a rulemaking proceeding is the logical and best means by which the Commission can ensure an informed judgment regarding the need for 500 and 900 number portability.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Walter Steimel, Jr.', written over a horizontal line.

Walter Steimel, Jr., Esq.
John Cimko, Esq.
Edwin G. Kichline, Esq.
HUNTON & WILLIAMS
1900 K Street, N.W.
Washington, D.C. 20006

CERTIFICATE OF SERVICE

I, Joelle Zajk, a Professional Assistant with the law firm of Hunton & Williams, hereby certify that on August 27, 1999, the foregoing COMMENTS OF PILGRIM TELEPHONE, INC., were served upon the Federal Communications Commission by hand delivery.


Joelle Zajk